

BOARD OF APPEALS CASE NO. 5003

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BEFORE THE

APPLICANT: Leonard McGrady

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ZONING HEARING EXAMINER

**REQUEST: Variance to allow 6 lots on
a panhandle; Lake Fanny Road and Grady
Lane, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 12/29/99 & 1/5/00

HEARING DATE: May 10, 2000

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Record: 12/31/99 & 1/7/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Leonard McGrady, is requesting a variance from Section 267-22(G)(1) of the Harford County Code to allow more than one (1) panhandle lot or more than 5% of the lots intended for detached dwellings to be panhandles in an R1 Urban Residential District. The Applicant is proposing six (6) panhandle lots.

The subject property is located between the southeast side of Lake Fanny Road and the northwest side of Grady Lane in the Fox Bow subdivision, Bel Air, in the Third Election District. The parcel is more specifically identified as Parcel No. 139, in Grid 4F, on Tax Map 48. The parcel is approximately 18.11 acres in size, all of which is zoned R1 Urban Residential.

Prior to the start of testimony at the hearing, counsel for the Applicant and the People's Counsel indicated that an agreement had been reached between the Applicant and adjoining property owners such that there would be no opposition to the Applicant's request if certain conditions were imposed by the Hearing Examiner upon approval of the variance. Following recitation of these conditions, People's Counsel withdrew from the matter based upon counsel's position that the agreement is in the best interests of the neighborhood.

The first witness to appear and testify was Mr. L. Gerald Wolff, a professional land surveyor for over 36 years. Mr. Wolff testified that he had prepared the preliminary plans for the property, which were marked and admitted as Petitioner's Exhibits 1, 2 and 3. According to Mr. Wolff, the subject property is located with Grady Lane to the east, and Bel Air Road and Lake Fanny Road to the west. It is situated approximately one-half mile north of the Benson Police Barracks, and just north of Winters Run. The property is 18.11 acres and is zoned R1.

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Mr. Wolff testified that the density associated with an R1 zoning designation is 1.8 dwelling units per acre, so that under the Harford County Zoning Code, the property could support a total of 32.6 dwelling units. It was Mr. Wolff's testimony that the Applicant had submitted a prior plan to divide the property into sixteen (16) lots. When this plan was presented to the Development Advisory Committee for review, there were many complaints by neighbors. As a result of the opposition to the proposal, Mr. Wolff was requested by the Applicant to redesign the plan for the property. The Applicant is now seeking only six (6) dwelling units for the parcel. However, according to Mr. Wolff, in order to provide access to these six lots, it is necessary for the lots to be designed as panhandles.

Mr. Wolff went on to testify that the natural features of the property make it unique. Just south of the subject parcel lies the major stream known as Winters Run. A small tributary stream and wetlands area practically cuts the parcel in half. The parcel contains areas of flood plain and wetland buffers for Winters Run that severely limit the buildable area of the property. In addition, there are slopes on the property that exceed 25 percent and slopes that exceed 15 percent. The parcel also contains significant forested area and a little over twelve (12) acres of the parcel is part a Natural Resource District. According to Mr. Wolff, because of these natural features and the existing access to the property off Grady Lane and Lake Fanny Road, literal enforcement of the Code would limit the use of this property to one panhandle lot, 18 acres in size. Mr. Wolff stated that, given the surrounding residential development, with much smaller lots, it would be unfair to the Applicant to limit the development of this property, in an R1 District, to only one dwelling unit on 18 acres. It was Mr. Wolff's testimony that utilization of several panhandle lots would allow the best use of the property with the least amount of detriment. He further testified that the proposed variance would not be detrimental to adjacent property owners. The proposed plan would minimize the impervious surface area and it would create lots much larger than those already existing on Grady Lane. It would also allow development without the construction of public roads, as the proposed lots would utilize an existing right-of-way. If the Code were strictly enforced, Mr. Wolff noted, public roads would be necessary and the density of development in the area would be increased.

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Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified regarding the Department's Staff Report and recommendation. According to Mr. McClune, the irregular configuration of the property as well as the sensitive environmental features makes the subject property unique. Mr. McClune echoed Mr. Wolff's testimony regarding the fact that the Applicant had submitted a prior plan for the development of the property which included 16 proposed lots with 2 cul-de-sac roadways. The current proposal significantly reduces the density of the property and will allow for less intense development. The current proposal should significantly reduce the amount of grading required and will have less impact on the surrounding properties than would be present if public roads were to be constructed. Therefore, the Department recommends approval of the requested variance, with three conditions, including submission of a plan to the Development Advisory Committee and a requirement that all proposed lots share common access drives from Grady Lane and Lake Fanny Road.

Mr. John Liberatore, 724 Grady Lane, Bel Air, a neighbor who initially supported the agreement with Applicant if certain conditions were imposed, appeared and testified that he had concerns about the size and location of group mailboxes and concrete pads for trash receptacles which would be constructed for the new dwelling units. He was primarily concerned about their location and whether they would be screened so that they would be aesthetically pleasing.

Mr. Max Carozza, 3 Lake Fanny Road, Bel Air, appeared and testified that he lives at the corner of the proposed Lake Fanny Road right-of-way which will provide access to two of the proposed lots. While Mr. Carozza indicated that he was not really opposed to the proposed homes, he had several concerns about the Applicant's request. Mr. Carozza testified that he utilizes the existing right-of-way to access his own property and he is concerned that this access will be impeded during construction of the proposed houses. He is concerned about the safety of his children and pets from traffic along the right-of-way. He also noted that there could be a back up of cars along Lake Fanny Road as they attempt to turn left onto Bel Air Road. This is apparently already a safety problem.

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Mr. Carozza indicated that he would have no opposition to the proposed development at all if he had alternative access to his property. He stated that there is no parking available on Lake Fanny Road itself. He noted that in the winter time, if the right-of-way access road gets icy and a vehicle gets stuck, the entire access to his and the other two homes would be blocked. He is also concerned about maintenance of the grass and property that lies within the right-of-way.

Three additional neighbors or adjoining property owners appeared and were sworn but indicated that they did not wish to testify in opposition if approval of the request were granted subject to the conditions outlined by the People's Counsel and agreed to by the Applicant. Those witnesses were: Edward Manner, 714 Grady Lane, Bel Air; Ms. Doris Manner, 714 Grady Lane, Bel Air; and Mr. Steven Castle, 728 Grady Lane, Bel Air.

Following the conclusion of the hearing, and in accord with the Hearing Examiner's request, the People's Counsel and counsel for the Applicant submitted a letter, which is contained within the file, which outlines those conditions which the parties recommend be incorporated in any decision to grant approval of the requested variance, and upon which opposition to the request would be withdrawn.

CONCLUSION:

The Applicant is requesting a variance to Section 267-22(G)(1) of the Harford County Code to allow more than one (1) or 5 percent of the proposed lots as a panhandle [Applicant is proposing six (6) panhandle lots] in an R1 Urban Residential District.

Section 267-22(G)(1) provides:

"Panhandle-lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:

- (1) Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.**

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In addition, Section 267-11 of the Code sets forth the conditions under which a variance from the Code may be approved:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

The uncontradicted testimony of the Applicant's witness, Mr. Wolff, and the Department of Planning and Zoning is that the subject parcel is unique because of its configuration and existing access via right-of-ways, as well as the presence of sensitive environmental features, including steep slopes, forested areas, Natural Resource District areas, and proximity to a major stream and tributaries with accompanying wetlands and buffers. The evidence is clear and convincing that significant consideration should be given to a plan that seeks to reduce the intensity of development on a parcel which contains such sensitive features. The evidence is also clear that the Applicant has presented a plan which meets this goal, in accord with the stated purpose of Section 267-22(G), as set forth above. The evidence also demonstrates that literal enforcement of the Code would result in practical difficulty in that it would make it impossible for anyone to develop the property in a manner that would minimize the impact to the environment and to the surrounding properties, as the Applicant's plan would appear to do.

With the imposition of certain conditions, as outlined in the agreement between the Applicant and adjoining property owners, it is clear that any significant detriment to neighbors can be reduced, if not eliminated. Based upon the stated purpose of the applicable Code section allowing the design of panhandle lots, it is clear that the purpose of the Code will not be impaired, but in fact will be maintained, by the approval of the requested variance allowing decreased intensity (and the accompanying decrease in traffic for 6 homes as compared to the prior proposed 16), as well as a minimizing of impervious surface area on the subject parcel.

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Accordingly, the Hearing Examiner finds that the subject property is unique due to its configuration, existing access drives and sensitive environmental features. The Hearing Examiner also finds that practical difficulty and hardship will result from the literal enforcement of the Code in that development of the parcel in a manner somewhat consistent with its zoning designation would be impossible. Approval of the request would decrease any detrimental effect to adjoining property owners by decreasing impervious surfaces, limiting density of development and accompanying traffic, and helping maintain the small community atmosphere in the neighborhood. In addition, the Hearing Examiner finds that approval of the request, with conditions, fulfills the purpose of the Code in attempting to "...achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features, or to minimize access to collector or arterial roads..."

Therefore, it is the recommendation of the Hearing Examiner that the Applicant's request for a variance be approved, subject to the following conditions:

1. The lots, which access off of Grady Lane (proposed lots 1, 2, 3 & 4 on the preliminary plan) shall be serviced by public water and sewer, subject to approval by the Harford County Department of Public Works;
2. The common drive which accesses the proposed lots off of Grady Lane will have a concrete apron installed at the street consistent with other properties along Grady Lane. The concrete apron will be from the sidewalk to the street;
3. The access off of Grady Lane and off of Lake Fanny Road will each be subject to a separate common drive agreement, which will require continued maintenance of the common drive by the owners who utilize the common drive. The common drive agreement must be executed and in place prior to the sale of any lots. Until that time, Mr. McGrady will maintain the common drives;
4. All common drive agreements shall provide that there shall be no parking or storage of any vehicles, trailers or other personal property along the entire width of the drive;
5. The Applicant, Mr. McGrady, shall request and comply with a Harford County approved forest conservation plan;

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6. Both common drives (i.e., the one off of Grady Lane and the one off of Lake Fanny Road) will be paved with a blacktop material prior to the initiation of any construction on the lots. The common drive off of Lake Fanny Road will be at least as long as is necessary to extend beyond the driveway of Mr. Carozza;
7. The six proposed lots will all be subject, at the least, to the current covenants and restrictions now applicable to the Grady Lane residents. Mr. McGrady may make these conditions for the proposed lots more stringent.
8. The mailboxes for the four lots off of Grady Lane will be placed on one post so as to minimize the random location of mailboxes. Similarly, the two mailboxes to service the lots off of Lake Fanny Road will be on one post. The location of the mailboxes will be shown on the site plan;
9. There will be a designated trash pad, in concrete, of approximately 5 feet by 10 feet, for lots 1, 2, 3 and 4. A similar trash pad, smaller in size, will be constructed for lots 5 and 6 off of Lake Fanny Road. These trash pads will be shown on the site plan;
10. A clean and safe work site will be maintained at all times;
11. No more trees than necessary for the construction of houses on the subject lots will be cut or removed;
12. The covenants and restrictions to be recorded for the subject parcel will contain affirmative restrictions against any further subdivision of the entire parcel which is the subject of this zoning case;
13. The covenants and restrictions to be recorded will contain a provision that no boats or trailers are to be parked or stored in the front or in the back of any constructed home, and any such boat or trailers shall be either garaged or enclosed from view;
14. A good faith effort will be used to design the common drive off of Grady Lane so as to minimize disturbance to the existing trees which the parties acknowledge were planted by Mr. Manner, and which had been inadvertently placed on Mr. McGrady's property;
15. The Applicant shall submit a detailed preliminary plan to be reviewed and approved through the Development Advisory Committee. The Applicant

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shall also submit a final plat for review and approval;

16. The Applicant shall obtain all necessary permits and inspections during the development of the property. All other County and State requirements shall be met.

Date JULY 17, 2000

**Valerie H. Twanmoh
Zoning Hearing Examiner**